

CHAPTER 24:05:29

CONFIDENTIALITY OF INFORMATION

Section

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24:05:29:02. Definitions. ~~The following definitions apply to this chapter only~~
Terms used in this chapter mean:

(1) "Act," "FERPA," the Family Educational Rights and Privacy Act of 1974, as amended to January 1, 2007, enacted as section ~~438~~ 444 of the General Education Provisions Act ~~as in effect December 23, 1996~~, as amended to January 1, 2007;

(2) "Attendance," presence in person or by correspondence; the period during which a person is working under a work-study program;

(3) "Destruction," physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable;

~~(3)~~ (4) "Directory information," information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed, such as the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, enrollment status (e.g full time or part time), participation in officially recognized activities and sports, weight and height

of members of athletic teams, dates of attendance, degrees, honors, and awards received, and the most recent previous educational agency or institution attended;

~~(4)~~ (5) "Disclosure," to permit access to or the release, transfer, or other communication of education records or the personally identifiable information contained in those records to any party, by any means, including oral, written, or electronic;

~~(5)~~ (6) "Education records," records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include the following:

(a) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(b) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit and the law enforcement records are maintained separately from education records, maintained solely for law enforcement purposes, and disclosed only to law enforcement officials of the same jurisdiction;

(c) Records related to an individual who is employed by an educational agency or institution that are made and maintained in the normal course of business, are related exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose. Records relating to an individual in attendance at the agency or institution who is employed as a result of the individual's status as a student are educational records and not excepted under this subdivision;

(d) Records on a student who is 18 years of age or older or is attending an institution of postsecondary education that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a professional capacity or assisting in a paraprofessional capacity; made, maintained, or used only in connection with treatment of the student; and disclosed only to individuals providing the treatment. For the purpose of this section, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(e) Records that only contain information about an individual after the individual is no longer a student at that agency or institution;

~~(6)~~ (7) "Eligible student," a student who has reached 18 years of age or is attending an institution of postsecondary education;

~~(7)~~ (8) "Institution of postsecondary education," an institution that provides education to students beyond the secondary school level;

~~(8)~~ (9) "Secondary school level," the educational level, not beyond grade twelve, at which secondary education is provided as determined under state law;

(10) "Participating agency," any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA;

~~(9)~~ (11) "Personally identifiable information," the student's name, the name of the student's parent or other family member, the address of the student or student's family, a personal identifier, such as the student's social security number or student number, and a list of personal characteristics or other information that would make the student's identity easily traceable; and

~~(10)~~ (12) "Record," any information recorded in any way, including handwriting, print, video or audio tape, film, microfilm, microfiche, and computer media.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:29:03. Annual notification of rights. Each school district shall annually notify parents of students currently in attendance and eligible students currently in attendance at the agency or institution of their rights under the Act and this chapter. The notice must ~~include a statement that~~ inform the parent or eligible student that the parent or eligible student has a right to do the following:

(1) Inspect and review the student's education records;

(2) ~~Request the~~ Seek amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

(3) Consent to disclosure of personally identifiable information contained in the student's education records, except to the extent that the Act and the regulations in this chapter authorize disclosure without consent; and

(4) File with the U. S. Department of Education a complaint concerning alleged failures by the agency or institution to comply with the requirements of the Act and this chapter.

The notice shall also include the procedures for exercising the right to inspect and review education records, the procedures for requesting the amendment of records and, if the educational agency or institution has a policy of disclosing education records, a

specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

The district may provide this notice by any means that are likely to inform the parents and eligible students of their rights and that will effectively notify parents of students who have a primary or home language other than English and parents or eligible students who are disabled.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:29:04. Access rights. Each school district shall permit parents to inspect and review any education records relating to their student which are collected, maintained, or used by the agency under this chapter. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individual education program or hearing relating to the identification, evaluation, or placement of the student, or discipline hearing, or resolution session, and in no case more than 45 calendar days after the request has been made.

The right to inspect and review education records under this section includes the following:

(1) The right to response from the district to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the district provide copies of the records containing the information if failure to provide these copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

The district may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, divorce, or custody.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

Cross-References:

Divorce and separate maintenance, SDCL chapter 25-4.

Jurisdiction and venue of guardianships, SDCL chapter 30-26.

Appointment, qualification, bonds and removal of guardians, SDCL chapter 30-27.
Custody, care and maintenance of wards, SDCL chapter 30-28.

24:05:29:06. Records on more than one child. If ~~an~~ any education record includes information on more than one child, the parents of those children may inspect and review only the information relating to their child or may be informed of that specific information.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:29:08. Fees. A school district may charge a fee for copies of records which are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. The district may not charge a fee to search for or to retrieve information under this chapter.

Source: 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

Cross-Reference: Fees, 34 C.F.R. ~~§ 300.566~~ § 300.617.

24:05:29:13. Consent. ~~Except as to disclosures addressed in § 24:05:26:15 for which parental consent is not required by FERPA, parental~~ Parental consent must be obtained before personally identifiable information is disclosed to ~~anyone~~ parties other than officials of ~~the district~~ participating agencies collecting or using the information under this article or used for any purpose other than meeting a requirement under this chapter, unless the information is contained in education records and the disclosure is authorized without parental consent under FERPA. The district may not release information from education records to participating agencies without parental consent except as follows:

(1) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is to other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests or to officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in subdivision (2) of this section; and

(2) An educational agency or institution that discloses the education records of a student pursuant to subdivision (1) of this section shall make a reasonable attempt to notify the parent of the student or the eligible student at the last known address of the

parent or eligible student, unless the disclosure is initiated by the parent or eligible student.

If the agency or institution includes in its annual notice of parent's rights that it is the policy of the public agency to forward education records on request to a school in which a student seeks or intends to enroll, then the public agency does not have to provide any further notice of the transfer of records.

An educational agency receiving personally identifiable information from another educational agency or institution may make further disclosures of the information on behalf of the educational agency without the prior written consent of the parent or eligible student if the conditions of subdivisions (1) and (2) of this section are met and if the educational agency informs the party to whom disclosure is made of these requirements. ~~If the parents refuse consent for the release of personally identifiable information to a third party, that party may proceed with the due process procedures under chapter 24:05:30 in an effort to obtain the desired information.~~

Source: 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:29:16. Children's rights. All of the parental rights in this chapter are extended to the child upon reaching the age of 18 unless the child has been declared incompetent by the courts, consistent with § 24:05:30:16.01, including taking into consideration the type or severity of a child's disability.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:29:18. Notice to parents. The ~~division~~ department shall give notice that fully informs parents about the requirements under this chapter, including the following:

(1) A description of the extent to which the notice is given in the native languages of the various population groups in the state;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information, including sources from whom information is gathered, and the uses to be made of the information;

(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all the rights of parents and children regarding this information, including the rights under 34 C.F.R. Part 99, Family Educational Rights and Privacy Act, as in effect December 23, 1996 as amended to January 1, 2007.

Before any major identification, location, or evaluation activity, the notice shall be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

Source: 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:29:20. U.S. department use of personally identifiable information. If the U.S. Department of Education or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Family Educational Rights and Privacy Act of 1974, as amended to ~~November 1, 1999~~ January 1, 2007, the U.S. secretary shall apply the applicable provisions of 5 U.S.C. 552a, as amended to ~~November 1, 1999~~ January 1, 2007, and the regulations implementing those provisions in 34 C.F.R. part 5b, as amended to ~~November 1, 1999~~ January 1, 2007.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.